

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROBERT GALLEGOS SR.

Petitioner,

v.

TOM L. CAREY,

Warden

Respondent.

CIV S-04-02741-MCE GGH P

**Order After Telephone  
Conference**

The court issued new writs for petitioner and his two inmate witnesses on April 7, 2008. Following the court's joint telephone conference on the same day with counsel for both parties, the undersigned, to promote economy and efficiency in these proceedings, now makes the following ORDERS:

1. By issuing modified writs on April 7, 2008, the following previous writs have been VACATED: the Writ of Habeas Corpus ad Testificandum for Robert Gallegos, CDC # P-18916, issued on March 17, 2008 (#73); the Writ and Amended Writ of Habeas Corpus ad Testificandum for ARTHUR CARR, CDC # C-66940, issued on March 21, 2008 (#76), and on March 25, 2008 (# 80); and the Writ of Habeas Corpus ad Testificandum for LEON POGUE, CDC # E-65357, issued on March 25, 2008 (#81); and

1           2. If video-conferencing facilities become available, respondent's  
2 counsel should make arrangements, of which the court is notified at the earliest  
3 opportunity, for petitioner's inmate witnesses, ARTHUR CARR, CDC # C-66940  
4 and/or LEON POGUE, CDC # E-65357, to appear via video-conferencing at the  
5 evidentiary hearing, now set to begin on April 29, 2008, at 9:00 a.m., rather than in  
6 person.

7           3. The court's clerk has been peppered with requests from respondent's  
8 counsel regarding her inability to convince prison authorities to make witnesses  
9 available by video conferencing. The evidentiary hearing has already been continued  
10 once as a result of counsel's requests for records or reservation of video conferencing  
11 facilities falling victim to other priorities of prison officials. However, there comes a  
12 time when the warden must realize that he is the named party in this action and the  
13 court has jurisdiction to make orders binding on the warden within the context of this  
14 case.

15           Further inabilities to comply with court orders will simply result in a  
16 striking of respondent's affirmative statute of limitations defense as well as monetary  
17 sanctions to reimburse petitioner's counsel for unnecessary expenditure of time.

18 DATED: 04/09/08

/s/ Gregory G. Hollows

GREGORY G. HOLLOWES  
United States Magistrate Judge

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